

November 10, 1999

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L98P0034**
Proposed Ordinance No. **1999-0575**

CEDAR RIDGE ESTATES
Preliminary Plat Application

Location: The southeast corner of the intersection of South 296th Street and 55th Avenue South

Applicant: Gordon Calvert, *represented by*
Hal Grubb, Barghausen Consulting Engineers, Inc.
18215 – 72nd Avenue South
Kent, WA 98032
Telephone: (425) 251-6222

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary Recommendation:	Approve, subject to conditions
Department's Final Recommendation:	Approve, subject to conditions
Examiner's Decision:	Approve, subject to conditions

PRELIMINARY MATTERS:

Application or petition submitted:	August 31, 1998
Complete application:	September 28, 1998

EXAMINER PROCEEDINGS:

Hearing Opened:	November 4, 1999
Hearing Closed:	November 4, 1999

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.

A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Drainage
- Road standards
- Sight distance
- Density (subdivisions)
- Transferable density rights
- Transferable density credits

SUMMARY:

Fifteen dwelling unit subdivision on 2.9 acre site receiving transferable density credit granted preliminary plat approval

FINDINGS, CONCLUSIONS: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. **General Information.**

Owner/Developer:	Gordon Calvert Construction, Inc. P.O. Box 885 Enumclaw, WA 98022 Telephone: (360) 825-4123
Engineer:	Barghausen Consulting Engineers, Inc. 18215 – 72 nd Avenue South Kent, WA 98032 Telephone: (425) 251-6222
Location:	Southeast corner of intersection of South 296 th Street and 55 th Avenue South
STR:	SW ¼ 2-21-4
Zoning:	Residential (R-4)
Acreage:	2.9
Number of Lots:	15
Density:	5.1
Typical Lot Size:	4,500 to 6,500 square feet
Proposed Use:	Residential
Sewage Disposal:	Lakehaven Water and Sewer
Water Supply:	Lakehaven Water and Sewer
Fire District:	39
School District:	Federal Way School District
Complete Application Date:	September 28, 1998

2. **Proposal.** Gordon Calvert Construction (the "Applicant") proposes to subdivide a 2.9 acre parcel into 15 single family residential building lots. Lot sizes would range from approximately 4,500 square feet to 6,500 square feet. The proposed subdivision would also contain a drainage tract comprising approximately 23,215 square feet. Thus the proposed residential density upon approval would be 5.1 dwelling units per acre. This density is achievable through the Transfer of Development Credit (TDC) pilot program established by KCC 21A.55., discussed further in Finding No. 6, below.
3. **Department Recommendation.** The Department of Development and Environmental Services (the "Department" or "DDES") recommends granting preliminary plat approval subject to the 16 conditions of final plat approval stated on pages 7 through 10 of the Department's preliminary report to the Hearing Examiner, dated November 4, 1999 (Exhibit No. 2) with only one amendment. The Department amends its preliminary recommendation by expanding the street tree planting requirement contained in recommended Condition 16a to include not only South 296th Street but also 55th Avenue South. Both streets are classified as arterials and are subject to arterial amenity standards.

The Department does not propose, but will accept, an additional requirement that allows a neighboring property owner to review and comment upon the Applicant's retention/detention pond engineering drawings and the geotechnical study that must be completed prior to development of those drawings. The Department has some concerns regarding such a review process. Those concerns are addressed further in Finding No. 7, below.
4. **Applicant Response.** The Applicant accepts the Department's recommendation as described in Finding No. 3, above.
5. **State Environmental Policy Act.** On August 31, 1999 the Department issued a threshold determination of non-significance for the proposed development of Cedar Ridge Estates. That is, the Department issued its determination that the proposed development would "not cause probable significant adverse impacts on the environment" and that, therefore, an environmental impact statement would not be required. This determination was based upon the Department's review of all relevant environmental documents. No agency, tribe, interested person or other entity appealed that determination.
6. **Density.** Neighboring property owners express concern regarding the density of the proposed development. The proposed 4,500 to 6,500 square foot lot sizes run at approximately half the size of other subdivided lots abutting and nearby. This result is achievable due to KCC 21A.55 which establishes a development credit transfer program. The program calls for a "sending site" that is paired with a "receiving site." The sending site voluntarily relinquishes zoned density development potential that is allocated to the receiving site. KCC 21A.55.160 establishes an inter-agency review committee that includes DDES, the Department of Natural Resources and the Department of Parks and Recreation for the purpose of reviewing development credit transfer applications. The determinations of the committee are appealable to the Examiner. KCC 21A.55.170.A.3 provides that when the development of the receiving site requires a public hearing that public hearing shall also serve as the hearing on the transferable development credit

proposal and the reviewing authority shall make a consolidated decision on the proposed development and the transferable density credit review. Recommended Condition No. 3 would require the development to be reduced from 15 to 11 lots in the absence of transferable density credit certification.

7. **Drainage Retention/Detention Facility Design.** Due to downstream characteristics, the Department recommends "Level 3" stormwater control and retention/detention standards, the highest level of stormwater control provided by the King County Surface Water Management Design Manual. This design standard requires a large stormwater retention/detention facility--in this case, as noted above, approximately 23,215 square feet. Immediately west of the proposed drainage facility "Tract A", elevation drops markedly from 410 feet to 395 feet over a short distance, approximately 30 feet (scaling from topographic mapping contained on Exhibit No. 7, Revised Preliminary Plat drawing). Consequently, an abutting property owner expresses concern regarding drainage tract facility stability and long term liability.

Regarding long term liability, the hearing record shows that King County will assume ownership and long term maintenance responsibility for the tract. However, more definitive statements regarding liability cannot be made because the facts and circumstances surrounding any individual liability claim would be unique to that claim.

The Department recommends that the Applicant be required to prepare a special geotechnical study addressing such concerns as leakage or instability. The Applicant accepts this recommendation. Further, the Applicant is willing to provide copies of its geotechnical study and its RD facility design to concerned property owner Jaquish two weeks prior to filing those documents with DDES in order obtain review comment from that property owner.

Because the Department's authority is limited by the King County Surface Water Drainage Manual, it opposes any review procedure which could be construed as granting a neighboring property owner some sort of administrative veto. Further, the Department requests that the neighboring property owner comments be directed to the Applicant, not the Department. The neighboring property owner is an engineer and therefore considered competent to review these engineering documents.

8. **Other Issues.** Facts that are relevant to other issues raised in the public hearing include these:
 - a. **Access via 55th Avenue South.** The access street, a neighborhood collector, 55th Avenue South, is developed to only half street width along the west frontage of the Cedar Ridge Estates property and along an additional approximately 225 feet southward from the subject property. The Applicant will be required to improve the Cedar Ridge Estates frontage to full urban road section. That segment of 55th Avenue Southeast extending southward, however, will not be improved at this time. That half street situation will remain in effect until the southerly abutting property is also developed. Addressing safety concerns, the Department notes that King County Road Standards will require the Applicant to "taper" the Cedar Ridge Estates frontage improvements with paving and marking in such a manner as to smoothly facilitate traffic and pedestrians.

- b. **Entering sight distance.** South 296th Street is an arterial. The 55th Avenue South intersection with that arterial lacks sufficient entering sight distance to comply with King County Road Standards (KCRS). To fully satisfy the KCRS, the Applicant would be required to remove 14 feet of grade elevation along South 296th Street, an action which could have deleterious impacts upon adjacent residents and which could be construed as excessively onerous upon the Applicant. The Applicant has proposed a more moderate solution which would increase present entering sight distance from 100 feet to 170 feet. The King County Department of Transportation, Roads Division, has not yet taken action on that variance request but has indicated initial favorable response. The proposed plat will not be able to move forward to final approval without a Roads Division variance approval which assures improved road safety at that location.
 - c. **School Enrollment.** The Federal Way School District has indicated sufficient capacity to address anticipated student enrollment increases resulting from the proposed plat. In addition, the Applicant will be required to pay \$2,800 per lot to the Federal Way School District as an enrollment impact fee mitigation measure, totaling \$122,000.
9. **Conclusions Adopted as Findings.** Any portion of the conclusions below which may be construed as a finding is hereby adopted as such.
10. **Department Report Adopted.** The Department report entered in this hearing record as Exhibit No. 2 is accurate. It is adopted and incorporated here by this reference. Copies of the Departmental report will be attached to those copies of this Examiner's report that are forwarded to the Metropolitan King County Council.

CONCLUSIONS:

1. The development density proposed for Cedar Ridge Estates complies with the R-4 zoning of the property as amended by KCC 21A.55.100 through --.180. The evidence shows that the interagency committee and the King County Department of Natural Resources (KCDNR) have found the transfer of development credit from the sending site to be in compliance with these code provisions. The final action to be taken by the Applicant, actual acquisition of the transferable density credits, is prohibited from being taken until after preliminary plat approval. KCC 21A.55.170.A.2. KCC 21A.55.180 requires public notice regarding development of the receiving site. The hearing record contains evidence of compliance with this requirement.
2. The easterly abutting property owner expressing concern regarding the stability of the proposed retention/detention facility certainly has a direct property interest in the outcome of the engineering review following this preliminary review. The Examiner's amendment to Condition No. 8, below, will assure that property owner opportunity to comment upon the proposed stormwater detention facility as it may affect that interest.
3. Based upon the whole record, and according substantial weight to the determination of environmental significance made by the Land Use Services Division, it is concluded that

approval of this subdivision as recommended below would not constitute a major action significantly affecting the quality of the environment. All evidence of environmental impact relating to the proposed action and reasonable alternatives to the proposed action have been included in the review and consideration of this action.

4. If approved subject to the conditions recommended below, the proposed subdivision will comply with the goals and objectives of the Comprehensive Plan, Subdivision and Zoning Codes, and other official land use controls and policies of King County.
5. If approved subject to the conditions recommended below, this proposed subdivision will make appropriate provision for the public health, safety and general welfare and for drainage ways, streets, other public ways, water supply, and sanitary wastes; and it will serve the public use and interest.
6. The conditions recommended in the Land Use Services Division's Preliminary Report as amended below are in the public interest and are reasonable requirements.
7. Any portion of Findings 1 through 10, above, which may be construed as a conclusion is hereby adopted as such.

DECISION:

The subdivision of Cedar Ridge Estates, DDES File No. L98P0034, as described in Exhibit No. 7 of this hearing record, is granted preliminary APPROVAL subject to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
3. The site plan shall be revised to comply with the base density requirements of the R-4 zone classification which allows maximum of 11 lots for this site and shall meet the minimum dimensional requirements of this zone classification. If the Applicant obtains a TCD certificate prior to the engineering plan submittal, no revision to the site plan to reduce the number of lots to 11 will be required.
4. The Applicant must obtain final approval from the King County Health Department.
5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
6. The Applicant must obtain the approval of the King County Fire Protection Engineer for the adequacy of the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King

7. Final plat approval shall require full compliance with drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. The following conditions represent portions of the Code. Requirements shall apply to all plats.
 - a. Drainage plans and analysis shall comply with the 1990 King County Surface Water Design Manual and applicable updates adopted by King County.
 - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

“All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems, shall be constructed at the time of the building permit and shall comply with plans on file.”
8. The stormwater detention facility shall meet the Level Three Flow Control Methodology as described in the 1998 King County Surface Water Design Manual. The detention facility shall be evaluated by a geotechnical consultant for potential impacts to the rockery adjoining the east property line. A line of other suitable design may be required depending on the geotechnical analysis.

The Applicant shall provide to neighboring property owner John Jacquish, 5615 South 296th Court, Auburn, Washington 98001, a copy of the geotechnical consultant's report and a copy of the proposed stormwater detention facility design at least 14 days before filing those documents with DDES for engineering review. Mr. Jacquish may, at his discretion, file his review comments with the DDES review engineer, with a copy to be provided simultaneously to the Applicant's engineer, no later than 14 days following receipt. DDES shall not be bound or constrained in any way by the Jacquish review comments, but shall take them into consideration in its discharge of responsibility pursuant to the King County Surface Water Drainage Manual and KCC 9.04.
9. The following road improvements are required for this subdivision to be constructed according to the 1993 King County Road Standards:
 - a. FRONTAGE: The site frontage along South 296th Street shall be improved to the urban minor arterial standard. This improvement shall meet all conditions of approval for the road variance approved by a letter from Ronald Paananen dated August 27, 1999 or other future conditions as approved by the county engineer.

Any of this improvement off the existing right-of-way will require permission and/or easements from the owner(s). These permission documents shall be submitted at engineering plan submittal.

- b. FRONTAGE: The site frontage along 55th Avenue South shall be improved to the full width urban neighborhood collector standard.
 - c. 56th Court South shall be improved to the urban minor access street standard.
 - d. South 297th Street shall be improved to the urban one-half street standard.
 - e. Tract B shall be improved as a joint use driveway per Section 3.01 of the King County Road Standards. Lots 8 and 9 shall have undivided ownership of Tract B and be responsible for its maintenance. A note to this effect shall be placed on the engineering plans and final plat.
 - f. Modifications to the above road conditions may be considered according to Section 1.08 of the King County Road Standards.
10. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.

The Applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The Applicant has the option to either: (1) pay the MPS fee at final plat recording or, (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "all fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen the fee paid shall be the amount in effect as of the date of building permit application.

Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.

- 11. There shall be no direct vehicular access to or from 55th Avenue South from those lots which abut it. A note to this effect shall appear on the engineering plans and final plat.
- 12. Ten (10) feet of additional right-of-way for South 296th Street shall be dedicated along the north property line, allowing for 30 feet of right-of-way from centerline.
- 13. Nine (9) feet of additional right-of-way for 55th Avenue South shall be dedicated along the west property line, allowing for 24 feet of right-of-way from centerline.

14. Suitable recreation space shall be provided consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e. sport court[s], children's play equipment, picnic table[s], benches, etc.).
 - a. An overall conceptual recreation space plan shall be submitted for review and approval by DDES, with the submittal of the engineering plans. This plan shall include locations, area calculations, dimensions, and general improvements. The approved engineering plans shall be consistent with the overall conceptual plan.
 - b. A detailed recreation space plan (i.e. landscape specs, equipment specs, etc.) consistent with the overall conceptual plan, as detailed in Item a., shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of the final plat documents.
 - c. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
15. A homeowner's association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation and/or open space area(s).
16. Street trees shall be provided as follows:
 - a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along South 296th Street and 55th Avenue South.
 - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless the King County Department of Transportation determines that trees should not be located in the street right-of-way.
 - c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
 - d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowner's association or other workable organization unless the County has adopted a maintenance program. This shall be noted on the face of the final recorded plat.
 - e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
 - f. The Applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.

- g. The Applicant shall contact Metro Service Planning at 684-1622 to determine if South 296th Street is on a bus route. If South 296th Street is a bus route, the street tree plan shall also be reviewed by Metro.
- h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.

A \$538 landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.

ORDERED this 10th day of November, 1999.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 10th day of November, 1999, to the following parties and interested persons:

Bill Allanson
Estate of Gordon Calvert
Richard Dewitt
Jeff Dixon
Roger Dorstad
Hal Grubb
John Jaquish
Dave Kim
King County Environ. Health Div.
Eric LaBrie
Tracie Lamb-Kwon
Keri Lee
Linda Matlock
Eleanor Moon
Richard Moose
Larry West

Thomas Nirschl
Geraldine and Jon Schmidt
Tim and Lorrie Scott
K. R. Studley
Jim Vancuren
Geri Walker
Len and Laura Williams
Greg Borba
Kim Claussen
Fereshteh Dehkordi
Nick Gillen
Kristen Langley
Aileen McManus
Carol Rogers
Steven Townsend
Bruce Whittaker

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) *on or before November 24, 1999*. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council *on or before December 1, 1999*. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE NOVEMBER 4, 1999 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L98P0034 – CEDAR RIDGE:

R. S. Titus was the Hearing Examiner in this matter. Participating in the hearing and representing the Department were Fereshteh Dehkordi and Bruce Whittaker. Participating in the hearing and representing the Applicant were Eric LaBrie and Hal Grubb. Other participants in this hearing were John Jaquish, Traci Lamb-Kwon, Lorrie Scott and Geraldine Schmidt.

The following exhibits were offered and entered into the record:

Exhibit No. 1	Department of Development and Environmental Services File No. L98P0034
Exhibit No. 2	Department of Development and Environmental Services preliminary report, dated November 4, 1999
Exhibit No. 3	Application, receipt dated August 31, 1999
Exhibit No. 4	Environmental Checklist dated August 20, 1998
Exhibit No. 5	Declaration of Non-significance dated August 31, 1999
Exhibit No. 6	Affidavit of Posting indicating October 26, 1998 as date of posting and October 29, 1998 as the date the affidavit was received by the Department of Development and Environmental Services.
Exhibit No. 7	Revised site plan dated May 27, 1999
Exhibit No. 8	Land Use Map/Kroll page 705W
Exhibit No. 9	Assessors Maps SW 2-21-04 and NW 2-21-04
Exhibit No. 10	Level One Downstream Drainage Analysis dated August 7, 1999
Exhibit No. 11	Level One Downstream Drainage Analysis dated July 15, 1999 and updated October 27, 1999
Exhibit No. 12	Conceptual intersection improvement plan and profile receipt dated November 3, 1999
Exhibit No. 13	Letter from Connie Blumen of the Department of Natural Resources to Charles Jackson, dated October 20, 1999.
Exhibit No. 14	E-mail letter from Connie Blumen to Fereshteh Dehkordi, dated October 22, 1999.
Exhibit No. 15	Letters from Jon and Geraldine Schmidt, dated October 11, 1998 and September 15, 1999.
Exhibit No. 16	Letter from Bill Allanson to DDES staff, undated
Exhibit No. 17	Letter from K. R. Studley, dated November 5, 1998
Exhibit No. 18	Drainage Map for Bristol Knoll, dated January 15, 1992, with blue and pink highlighted markings
Exhibit No. 19	Letter from Ronald J. Paananen, King County Department of Transportation, Road Services Division, to Jeff Chalfant of Barghausen Engineering, dated August 27, 1999

